Allianz Golfcar (Mfg) Sdn Bhd v Chan Siew Foon & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R1–25–121 OF 1999
KC VOHRAH J
27 OCTOBER 2001

Labour Law — *Industrial Court — Admissibility of evidence — Letters on conciliation proceedings — Whether must be excluded in proceedings before Industrial Court — Whether Industrial Court could decide on this preliminary objection without hearing merits of case — Industrial Relations Act 1976 s 54(2)*

At the Industrial Court, the claimant (the first respondent) raised a preliminary objection, objecting to the inclusion of four letters in the bundle of documents of Allianz Golfcar (Mfg) Sdn Bhd ('the applicant company') which the company intended to use at the hearing of a case where the claimant had alleged constructive dismissal. The letters that formed the subject matter of the application were: (i) a letter dated 19 June 1997 by which the claimant considered himself dismissed without just cause and excuse from the services of the company with effect from 19 June 1997; (ii) a letter by the company to the claimant dated 18 August 1997 at the conciliation meeting which referred to the said conciliation meeting and confirming the decision held at the said meeting; (iii) the claimant's reply that the company's offer did not include the withdrawal of nine specified letters which the company had written and which the claimant had requested to be withdrawn; and (iv) a letter dated 28 August 1997 to the claimant. It was argued that the documents should be excluded from the bundle as s 54(2) of the Industrial Relations Act 1976 ('the Act') excluded evidence of any conciliation proceeding before the Director General under s 20(2) of the Act. The Industrial Court agreed with this argument and ruled that the documents be excluded. Dissatisfied, the company applied to quash the award. The company stated that the Industrial Court was wrong in its interpretation of s 54(2) of the Act in relation to the four documents and wrong to decide the preliminary objection without having heard the merits of the case. The claimant, on the other hand, argued that the letters were directly related to the proceedings and that in one of the letters by the company, there was direct reference to the conciliation proceeding.

Held, dismissing the application for certiorari with costs:

(1) The court found that the letters were connected to the conciliation proceeding at the Industrial Relations Department and that clearly there was reference as to the terms which were discussed at the meeting. In the fourth letter, a letter by the claimant to the company which was copied to the representative

of the Director General who held the conciliation meeting, there was summarized in a nutshell the dispute on the terms discussed at the conciliation meeting. Thus, the finding of the Industrial Court that the four letters were connected to the conciliation proceedings was not perverse. Since the letters reflected directly on some terms of settlement of the dispute between the parties which arose in the conciliation proceeding, the contents of the letters would be evidence of some of the matters discussed at the conciliation meeting or proceeding held before the Director General and that was proscribed under s 54(2) of the Act from being given in the proceeding before the Industrial Court (see p 136F–I).

(2) The court saw no merit in the ground that the Industrial Court exceeded its jurisdiction in handling down the award on the preliminary objection. Like a court of law, the Industrial Court would face issues relating to the admissibility of evidence and this could arise at any time during the proceedings. Some of the issues could be dealt with summarily, some at a later stage. Here, the claimant legitimately applied to the Industrial Court to make a ruling under s 54 of the Act. The court could and did give a ruling on those documents before proceeding to deal with the merit of the case. That was not wrong in law (see pp 137H–138A).

Obiter:

Under s 20(2) of the Act, the Director General upon receipt of the representations shall take such steps as he may consider necessary or expedient so that an expeditious settlement thereof was arrived at. Where the Director General was satisfied that there was no likelihood of the representations being settled, he shall then notify the Minister. Thus, until the Director General referred the representations to the Minister on the ground there was no likelihood of the representations being settled, the conciliation proceeding was still at large. The communication between the parties until then where the Director General as conciliator was seized of, ie the ongoing correspondence between the parties on the terms, did relate to the proceeding before the Director General under s 20(2) of the Act and therefore evidence thereof had to be excluded under s 54(2) of the Act. In this case, the Director General, until he notified the Minister of the unsettled representations was still acting as conciliator especially when he was seized of the continuing dispute on the terms through two of the four letters, both of claimant's which had been copied to the Director General's representative (see p 137A–D).

[Bahasa Malaysia summary

Di Mahkamah Perusahaan, pihak yang menuntut (respondent pertama) telah membangkitkan bantahan awal, membantah kepada

kemasukan empat pucuk surat di dalam ikatan dokumen Allianz Golfcar (Mfg) Sdn Bhd ('syarikat pemohon tersebut') yang hendak digunakan oleh syarikat tersebut pada pendengaran kes di mana pihak yang menuntut telah mengatakan bahawa beliau telah dipecat secara konstruktif. Surat-surat yang menjadi subjek permohonan tersebut adalah: (i) surat bertarikh 19 Jun 1997 di mana pihak yang menuntut menganggap beliau telah dipecat tanpa sebab yang adil ataupun alasan daripada syarikat tersebut bermula dari 19 Jun 1997; (ii) sepucuk surat dari syarikat tersebut kepada pihak yang menuntut bertarikh 18 Ogos 1997 pada mesyuarat pendamaian yang merujuk kepada mesyuarat pendamaian tersebut dan mengesahkan keputusan di mesyuarat tersebut; (iii) balasan pihak yang menuntut bahawa tawaran syarikat tersebut tidak termasuk penarikan kembali sembilan pucuk surat yang khusus oleh syarikat tersebut dan pihak yang menuntut telah meminta supaya surat-surat tersebut ditarik balik; dan (iv) surat bertarikh 28 Ogos 1997 kepada pihak yang menuntut. Telah dikatakan bahawa dokumen-dokumen tersebut patut dikecualikan daripada ikatan kerana s 54(2) Akta Perhubungan Perusahaan 1967 ('Akta tersebut') mengecualikan keterangan prosiding pendamaian di hadapan Ketua Pengarah di bawah s 20(2) Akta tersebut. Mahkamah Perusahaan bersetuju dengan hujahan ini dan telah membuat keputusan untuk mengecualikan dokumen-dokumen tersebut. Syarikat tersebut tidak berpuas hati dan memohon supaya award tersebut dibatalkan. Syarikat tersebut mengatakan bahawa Mahkamah Perusahaan telah khilaf dalam tafsiran s 54(2) Akta tersebut berkenaan dengan empat dokumen dan juga khilaf dalam membuat keputusan di atas bantahan awal sebelum mendengar merit kes tersebut. Pihak yang menuntut telah mengatakan bahawa surat-surat tersebut berkait secara langsung kepada prosiding tersebut dan terdapat rujukan kepada prosiding pendamaian di dalam salah satu daripada surat-surat tersebut.

Diputuskan, menolak permohonan untuk certiorari dengan kos:

(1) Mahkamah telah memutuskan bahawa surat-surat tersebut berkait dengan prosiding pendamaian di Jabatan Perhubungan Perusahaan dan jelasnya terdapat rujukan kepada terma-terma yang dibincangkan dalam mesyuarat tersebut. Di dalam surat yang keempat, iaitu salinan surat oleh pihak yang menuntut kepada wakil Ketua Pengarah yang telah mengadakan mesyuarat pendamaian tersebut, terdapat ringkasan pertikaian terma yang dibincangkan di mesyuarat pendamaian tersebut. Oleh demikian, keputusan Mahkamah Perusahaan bahawa keempat-empat surat tersebut berkait dengan prosiding pendamaian tidak berputar belit. Memandangkan bahawa surat-surat tersebut mencerminkan terma-terma di dalam penyelesaian pertikaian di antara parti-parti yang dibangkitkan di dalam prosiding pendamaian, kandungan surat-surat tersebut menjadi keterangan perkara-perkara yang dibincangkan di dalam mesyuarat pendamaian

A atau prosiding di hadapan Ketua Pengarah dan ia tidak dibenarkan di bawah s 54(2) Akta tersebut daripada dikemukakan di dalam prosiding di hadapan Mahkamah Perusahaan (lihat ms 136F–I).

(2) Mahkamah tidak dapat melihat merit dalam alasan bahawa Mahkamah Perusahaan melampaui budi bicaranya semasa memberi award tersebut berdasarkan bantahan awal. Seperti dengan mahkamah undang-undang, Mahkamah Perusahaan juga perlu menghadapi isu-isu berkenaan dengan kebolehterimaan keterangan yang boleh timbul semasa prosiding. Sesetengah isu boleh diselesaikan secara terus, dan yang lain kemudiannya. Dalam kes ini, pihak yang menuntut telah memohon dengan sah kepada Mahkamah Perusahaan untuk membuat keputusan di bawah s 54 Akta tersebut. Mahkamah boleh dan telahpun memberi keputusan mengenai dokumen-dokumen tersebut sebelum membicarakan merit kes tersebut. Itu tidak salah di sisi undang-undang (lihat ms 137H–138A).

Obiter:

Di bawah s 20(2) Akta tersebut, setelah Ketua Pengarah menerima representasi-representasi tersebut, beliau dikehendaki mengambil langkah-langkah yang dianggap perlu dan suai manfaat supaya penyelesaian yang cepat dan cekap boleh disampai. Jikalau Ketua Pengarah berpendapat bahawa representasi tidak dapat diselesaikan, beliau sepatutnya memberitahu Menteri berkenaan. Oleh demikian, sehingga Ketua Pengarah merujuk representasi-representasi tersebut kepada Menteri dengan alasan tiada penyelesaian, prosiding pendamaian masih diteruskan. Perhubungan di antara pihak-pihak sehingga itu di mana Ketua Pengarah berperanan sebagai pendamai, iaitu perhubungan surat-menyurat mengenai terma-terma, memang berkenaan dengan prosiding di hadapan Ketua Pengarah di bawah s 20(2) Akta tersebut, dan oleh itu, keterangan tersebut patut dikecualikan di bawah s 54(2) Akta tersebut. Dalam kes ini, Ketua Pengarah masih menjadi pendamai sehingga beliau memberi notis mengenai representasi-representasi yang belum diselesaikan terutamanya apabila pertikaian berterusan berkenaan dengan terma-terma melalui dua daripada empat pucuk surat pihak yang menuntut yang telah disalinkan kepada wakil Ketua Pengarah (lihat ms 137A–D).]

Notes

For a case on admissibility of evidence before the Industrial Court, see 8(1) *Mallal's Digest* (4th Ed, 2001 Reissue) para 1177.

Cases referred to

Lee Boon Khoon v MEC PAC Engineering (M) Sdn Bhd Originating Motion No R1–25–104 of 1996 (refd)

Minister of Labour and Manpower & Anor v Wix Corp South East Asia Sdn Bhd [1980] 2 MLJ 248 (refd) A

Legislation referred to

Industrial Relations Act 1976 ss 2, 20(2), 54(2) B

P Anandarajah (*Zul Rafique & Partners*) for the applicant.
Subithra Ravindran (*Lobo & Associates*) for the respondent.

KC Vohrah J: This certiorari application seeks to quash Award No 569 of 1999 of the Industrial Court, wherein the court made a ruling on a matter C which had been raised on a preliminary objection.

Chan Siew Foon ('the claimant'), the first respondent herein, objected to the inclusion of four letters in the bundle of documents of Allianz Golfcar (Mfg) Sdn Bhd ('the company') which the company (the applicant herein) intended to use at the hearing of a case where the claimant had alleged D constructive dismissal. It was argued that the said documents should be excluded from the bundle as s 54(2) of the Industrial Relations Act 1976 ('the Act') excludes evidence to be given of any conciliation proceeding before the Director General under s 20(2) of the Act.

The Industrial Court agreed with the argument and ruled that the E documents be excluded. The company says the Industrial Court was wrong in its interpretation of s 54(2) of the Act in relation to the four documents.

The company also says that the Industrial Court was wrong to decide the preliminary objection without having heard the merits of the case.

The facts F

The claimant was employed by the company as general manager on 2 May 1996. By a letter dated 19 June 1997, he considered himself dismissed without just cause and excused from the services of the company with effect from 19 June 1997. The claimant then filed representations under s 20 of the Act. An officer acting on behalf of Director General (see definition of G Director General under s 2 of the Act) proceeded to hold a conciliation meeting on 18 August 1997 in regard to the representations.

After the conciliation meeting, the company wrote a letter to the claimant dated 18 August 1997 (see the affidavit filed on behalf of the company exhibiting the bundle of documents, encl 3 at p 140) which H referred to the said conciliation meeting, and confirmed the discussion held at the said conciliation meeting. The claimant replied to this letter informing the company that the company's offer did not include the withdrawal of nine specified letters which the company had written and which the claimant had requested to be withdrawn (see affidavit, encl 3 at p 141). This letter was copied to the officer who conducted the conciliation I meeting. In the statement of case, there was attribution to some of these letters which caused him to claim himself dismissed.

Subsequently, the company wrote a letter dated 28 August 1997 to the claimant (see affidavit, encl 3 at p 143) to which the claimant gave a reply (see affidavit, encl 3 at p 144) maintaining that his representations under s 20 of the said Act were unresolved. This letter was also copied to the officer who conducted the conciliation meeting.

The above four letters ('the four letters') form the subject matter of this certiorari application.

The claimant then wrote several letters to the Director General inquiring as to the status of the matter.

The Director General replied by letter dated 22 September 1997 that the claimant's representations were still under process. It will be noted that at this stage, the Director General had not yet notified the Minister of Human Resources of the unsettled representations. It was subsequently done and the Minister of Human Resources referred the claimant's representations to the Industrial Court on 28 November 1998.

At the hearing of this case before the Industrial Court on 5 October 1999, the claimant raised an objection, inter alia, against the inclusion of the four letters in the company's bundle of documents.

The claimant's objection was based on the ground that the four letters in the company's bundle were privileged under s 54 of the Act and as such, the documents should be expunged from the company's bundle.

After hearing the parties, the Industrial Court handed down a ruling under Award No 569 of 1999 that after it had scrutinized the documents (the four letters), it was of the view that they 'were connected to what transpired at the conciliation proceedings and were privileged by s 54(2) of the Act'. The court allowed the claimant's preliminary objection and disallowed the said documents to be included in the company's bundle of documents.

Whether the Industrial Court was correct in excluding the four letters

To understand the perspective of the first issue, s 54(2) of the Act needs to be reproduced:

> 54 Exclusion of evidence as to certain matters —
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> (1) ...
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> (2) In a proceeding before the court on a reference to the court under s 20(3), no evidence shall be given of any proceeding before the Director General under s 20(2) other than a written statement in relation thereto agreed to and signed by the parties to the reference.
>
> (3) ...

The company argued that when the Industrial Court came to the conclusion that the four letters are connected to what transpired at the conciliation proceeding, and are therefore privileged and should be excluded by virtue of s 54(2) of the Act, the court had erred in law. The company also stated that the court did not give any reason for arriving at

this conclusion other than merely making a bare statement in the last paragraph of its award to the effect that 'having scrutinized the documents, this court is of the view the documents ... were connected to what transpired at the conciliation proceedings and were privileged by s 54(2) of the Act'. A

In developing the argument that the Industrial Court had erred in law in construing the letters as part of the proceedings before the Director General, it was submitted that to state that the four letters should be excluded merely because they are connected to what had transpired at the conciliation proceedings is to give s 54(2) of the Act an interpretation that was never intended. This is because s 54(2) of the Act merely prohibits evidence to be given in respect of proceedings before the Director General. Two of the four letters were written by the company and they were written directly to the claimant and copies of the letters were not extended to the Director General. It was argued that these letters were sent to the claimant after the conciliation proceeding at the Industrial Relations Department. B C

The company relied on the unreported case of *Lee Boon Khoon v MEC PAC Engineering (M) Sdn Bhd* (Originating Motion No R1–25–104 of 1996) for its submission. With respect, the case is not relevant in the context of the facts of this case and what I have to say about them in relation to s 54(2) of the Act. D

On the other hand, the claimant argues that the four letters were directly related to the proceedings and that in one of the letters written by the company there is direct reference to the conciliation proceeding at the Industrial Relations Department held on 18 August 1997, and the letters which followed arose as a result of the letter which pointed to the conciliation proceeding. It was pointed out by the claimant that the Industrial Court had made a finding of fact (after having scrutinized the documents) that the said documents are connected to what had transpired at the conciliation proceeding and are privileged under s 54(2) of the Act. E F

This court has looked at the four letters exhibited at pp 140–144 of the affidavit filed on behalf of the company (encl 3) and find indeed that the four letters are connected to the conciliation proceeding at the Industrial Relations Department and that clearly there is reference as to the terms which were discussed at the meeting. In the fourth letter, a letter by the claimant to the company which was copied to the representative of the Director General who held the conciliation meeting, there is summarized in a nutshell the dispute on the terms discussed at the conciliation meeting. Thus, the finding of the Industrial Court that the four letters are connected to the conciliation proceedings is not perverse. G H

Since the letters reflect directly on some terms of settlement of the dispute between the parties which arose in the conciliation proceeding, the contents of the letters would be evidence of some of the matters discussed at the conciliation meeting or proceeding held before the Director General, or an officer acting on behalf of the Director General and that is proscribed under s 54(2) of the Act from being given in the proceeding before the Industrial Court. I

A The matter can be looked at from another perspective. Under s 20(2) of the Act, the Director General upon receipt of the representations shall take such steps as he may consider necessary or expedient so that an expeditious settlement thereof is arrived at. Where the Director General is satisfied that there is no likelihood of the representations being settled, he shall then notify the minister. Thus, until the Director General refers the B representations to the minister on the ground there is no likelihood of the representations being settled, the conciliation proceeding is still at large. The communication between the parties until then where the Director General as conciliator (see *Minister of Labour and Manpower & Anor v Wix Corp South East Asia Sdn Bhd* [1980] 2 MLJ 248 at p 250 on what the role C of the Director General as conciliator comprises) is seized of, ie the ongoing correspondence between the parties on the terms, do relate to the proceeding before the Director General under s 20(2) of the Act and therefore evidence thereof has to be excluded under s 54(2) of the Act. In our case, the Director General until he notified the minister of the unsettled representations, was still acting as conciliator especially when he was seized D of the continuing dispute on the terms through two of the four letters, both of the claimant's which had been copied to the Director General's representative.

We should be reminded of the words of the Federal Court that courts should not be concerned with what transpired at the conciliation E proceeding and where there is no settlement, they need only concern themselves with the fact that there is no settlement. In *Wix Corp South East Asia Sdn Bhd*, the Federal Court observed at p 251:

> ... The steps taken by the Director General to get parties together for the purpose of conciliation had been described as 'conciliation proceedings'. The description 'proceeding' must have been brought about by s 54(2) ... The use F of the words 'any proceeding' must be taken to be in the loose, and not judicial, sense and must also be taken to give him the option whether or not to have such proceeding. In any case, what should be noted in the provision is that since the legislature had deemed it fit to exclude as evidence such proceeding from the Industrial Court, it should also be excluded from other courts. This provision should indicate that the court not be concerned with G what transpired at the conciliation proceeding, and where there is no settlement they need only concern themselves with that fact.

In my view, there is no error of law when the Industrial Court disallowed the letters to be included for use as evidence in the case.

H *Whether there was excess of jurisdiction entertaining the objection*

I now come to the second ground that the Industrial Court exceeded its jurisdiction in handling down the award on the preliminary objection.

I see no merit in this ground. Like a court of law, the Industrial Court would face issues relating to the admissibility of evidence and this could I arise at any time during the proceedings. Some of the issues can be dealt with summarily, some at a later stage. Here, the claimant legitimately applied to the Industrial Court to make a ruling under s 54 of the Act. The

court could and did give a ruling on those documents before proceeding to deal with the merits of the case. That is not wrong in law. A

In the result, I dismiss the application for certiorari with costs.

Application for certiorari dismissed with costs.

Reported by Chew Phye Aun B

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